

## SUBCONTRACT

This contract agreement made and entered into this 3rd day of October 2002, by and between the Oglala Sioux Tribe Transportation Department, a legal political subdivision of the Oglala Sioux Tribe (hereinafter Transportation), P. O. Box 33, Pine Ridge, South Dakota, 57770, and C&W Enterprises, Inc., P. O. Box 84826, Sioux Falls, SD 57118 (herein the subcontractor).

For and in consideration of the mutual promises set fourth below, the parties agree to the following terms, and conditions.

1. **Contract Price and Bid Schedule.** Transportation agrees to subcontract with the Subcontractor for the Pine Ridge Route 2 Cuny Table for Grading, Draining and Asphalt Surfacing project for the Contract amount of \$3,234,377.72 in accordance with the attached billing schedule incorporated herein by reference. This schedule is based on unit pricing, and the parties acknowledge payment will vary depending on actual quantities installed. Unit prices provided in the bid schedule incorporated herein by reference include bond and Tribal TERO fee of 4 % of the Contract amount.
2. **Project Completion Date.** The Project shall be substantially complete by \_\_\_\_\_ or the scheduled liquidation provisions will be in effect, absent extension. Substantial completion is the stage in the progress of the work when the work is sufficiently complete in accordance with the Contract documents so that the Project may be utilized for its intended use. The Subcontractor agrees that for and in consideration of the unit price as set forth in the attached and incorporated herein by reference bid schedule, it shall faithfully carry out the duties to complete the Project in a timely manner.
3. **Delay and Extensions of Time.** If the Subcontractor is delayed at any time in the commencement or progress of the work by an act or neglect of the Oglala Sioux Tribe or Transportation, or of an employee of either, or of a separate contractor employed by either, or by changes ordered in the work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, weather, or other causes beyond the Subcontractor's control, or by delay authorized by the Oglala Sioux Tribe or Transportation pending litigation, arbitration, or mediation, or by other causes which reasonably justify delay, then the Contract time shall be extended by a reasonable amount of time under the circumstances,
4. **Performance Payment Bond.** The Subcontractor agrees that it will provide a Performance Payment bond for the Contract amount to the Oglala Sioux Tribe upon execution of this Contract.
5. **Contract Documents.** To the extent any such requirements are not contrary to the provisions of this Contract, the Subcontractor agrees to proceed in accordance with the 1999 Oglala Sioux Tribal Employment Rights Ordinance, FHA Standard Specifications for the Construction of Roads and Bridges on Federal Highway Projects, FP-96, the OST Transportation Code including supplemental specifications contained in Section C, and special contract reqt **Plaintiff's Complaint** Exhibit C itract and plans.

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6. **Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed, and in no event later than twenty-one (21) days after first observance of the conditions. The parties shall promptly investigate such conditions and, if the conditions differ materially and cause an increase in the Subcontractor's cost or time required for performance of any portion of the work, there shall be an equitable adjustment through change order in the Contract sum or Contract time, or both. If the parties cannot agree on an adjustment in the Contract sum or Contract time, the adjustment shall be subject to further proceedings as set forth in Claim Resolution, Item 10.
7. **Written Change Order.** A change order is a written instrument signed by both the authorized representative of Transportation and the Subcontractor, stating their agreement upon all of the following:
- a. A change in the work;
  - b. The amount of the adjustment, if any, in the Contract sum; and
  - c. The extent of the adjustment, if any, in the Contract time.
8. **Payment.** Transportation shall make bi-weekly progress payments. Payment shall be made on the 15<sup>th</sup> and last day of each month. Final payment, constituting the entire unpaid balance of the Contract sum, shall be made by Transportation to the Subcontractor when the Contract has reached final completion.
9. **Limited Waiver of Sovereign Immunity.** As a condition precedent to the parties being bound by the terms and conditions of this Contract, the Oglala Sioux Tribe of the Pine Ridge Reservation shall pass a resolution stating in material respects the following: (1) for the purpose of insuring the successful completion of the work and related matter, in order to provide the greatest social and economic benefits for the Oglala Sioux Tribe, the Oglala Sioux Tribe grants a limited waiver of its immunity for any and all disputes arising from this Contract, including the interpretation of the agreement and work completed or to be completed under the Contract; provided, however, that such waiver extends only to the Oglala Sioux Tribe and Transportation's specific obligations under the Contract; and further provided that such waiver shall be only to the extent necessary to permit enforcement by the Subcontractor. Nothing in the resolution is intended to waive nor shall it be construed to waive the sovereign immunity of the Oglala Sioux Tribe with respect to any disputes or matters outside the terms of this Contract, nor as to any claims or demands by any person or entity not a signatory to the Contract; and (2) that an individual from the Oglala Sioux Tribe Transportation Department, with approval of the Oglala Sioux Tribe Executive Committee, shall be specifically designated and authorized to enter into change orders which increase or decrease the Contract sum and time.
10. **Claim Resolution.** The parties agree to bring any and all claims in the first instance to the Oglala Sioux Tribe Executive Committee for non-binding mediation, and thereafter to the South Dakota Federal District Court, and in the absence of Federal Court jurisdiction,

## SECTION B - SUPPLIES AND PRICES/COSTS

PINE RIDGE ROUTE 2 CUNY TABLE ROAD FOR GRADING, DRAINING AND ASPHALT SURFACING ON ROUTE 2-10,20(2) AND 41-40,50(5) LOCATED ON THE PINE RIDGE INDIAN RESERVATION, SOUTH DAKOTA

This section contains a bid schedule of pay items which identifies the Tribe's costs for the subject project.

If the Tribe intends to subcontract any of the pay items, the Tribe must provide the information on the subcontracting plan provided in Section J.

PLEASE USE BLACK INK OR TYPEWRITER

### BID SCHEDULE

PAY ITEM NO.	PAY ITEM NAME	EST. QUANTITY	PAY ITEM	UNIT BID PRICE	AMOUNT BID
15101	Mobilization	1.00	L.S.	\$ 265,000.00	\$ 265,000.00
15411	Slope, reference, and clearing and grubbing stakes	381.00	STA.	96.58	36,796.98
15212	Grade finishing stakes	381.00	STA.	83.71	31,893.51
15401	Contractor Testing	1.00	L.S.	80,056.92	80,056.92
15501	Construction Schedule	1.00	L.S.	1,684.19	1,684.19
15702	Temp. Turf Establishment	2.00	ACRE	318.43	636.86
15703	Silt fence	2,800.00	L.F.	3.49	9,772.00
15708	Straw bales	487.00	EACH	8.59	4,183.33
15714	Mucking Silt Fence and straw bales	200.00	C.Y.	16.08	3,216.00
20102	Clearing and grubbing	1.00	L.S.	10,641.30	10,641.30
20301a	Remove cattle guard	5.00	EACH	402.12	2,010.60
20301b	Remove signs	53.00	EACH	48.23	2,556.19
20301c	Reset 5'x7' RCP closed end section	2.00	EACH	804.27	1,608.54
20302a	Removal and stockpiling fence	72,241.00	L.F.	0.19	13,725.79
20302b	Reset 5'x7' RCP cattle pass	62.00	L.F.	64.34	3,989.08
20303	Removal of Asphalt Pavement	13,300.00	S.Y.	1.00	13,300.00
20304	Removal of pipe culvert	1.00	L.S.	21,243.16	21,243.16
20401	Roadway Excavation	327,605.00	C.Y.	1.25	409,506.25
20402	Subexcavation	116,338.00	C.Y.	0.75	87,253.50
20407	Select topping	17,741.00	C.Y.	2.00	35,482.00
20702	Earthwork geogrid	72,173.00	S.Y.	2.50	180,432.50
21103	Roadway obliteration	128.00	STA.	194.27	24,866.56
25303	Gabions, galvanized or aluminized coated	83.00	C.Y.	134.97	11,202.51
30101	Aggregate base, grading "D" (Haul & Lay)	82,032.00	TON	4.72	387,191.04
40101	Hot Asphalt Concrete Pavement, Cl. "C", gr. D (Mix & Lay)	31,815.00	TON	13.00	413,595.00
40103	Asphalt Cement, Grade PG 64-28	1,909.00	TON	308.77	589,441.93
40904	Emulsified asphalt, grade CSS-1h (Seal Coat)	32.00	TON	253.73	8,119.36
41201	Emulsified asphalt, grade CSS-1h (Tack Coat)	31.00	TON	316.58	9,813.98
40101a	24" RCP culvert, class 3	990.00	L.F.	33.77	33,432.30

60201b	30" RCP culvert, class 2	480.00	L.F.	46.43	22,286.40
60201c	36" RCP culvert, class 2	222.00	L.F.	61.20	13,586.40
60201e	48" RCP culvert, class 2	206.00	L.F.	96.11	19,798.66
60201k	18" CMP culvert, 16 ga.	500.00	L.F.	22.01	11,005.00
60203b	36" Equivalent arch RCP, class 2	232.00	L.F.	84.15	19,522.80
60203c	42" Equivalent arch RCP, class 2	482.00	L.F.	103.91	50,084.62
60203d	54" Equivalent arch RCP, class 2	100.00	L.F.	140.39	14,039.00
60206a	Safety end section for 18" CMP culvert, w/bars	16.00	EACH	361.75	5,788.00
60206b	Flared end section for 24" RCP culvert	22.00	EACH	494.45	10,877.90
60206c	Flared end section for 30" RCP culvert	10.00	EACH	605.80	6,058.00
60206d	Flared end section for 36" RCP culvert	2.00	EACH	785.57	1,571.14
60206f	Flared end section for 48" RCP culvert	4.00	EACH	1,014.81	4,059.24
60208b	Flared end section for 36" equiv. dia. arch RCP culvert	4.00	EACH	869.65	3,478.60
60208c	Flared end section for 42" equiv. dia. arch RCP culvert	10.00	EACH	1,019.48	10,194.80
60208d	Flared end section for 54" equiv. dia. arch RCP culvert	2.00	EACH	1,301.05	2,602.10
61102	8" Water line, relocate	2,400.00	L.F.	10.72	25,728.00
61901a	Fence, type "B", class 3	74,924.00	L.F.	1.02	76,422.48
61901b	Fence, temporary	31,000.00	L.F.	0.63	19,530.00
61904a	Brace panel, 2 post	102.00	EACH	141.66	14,449.32
61904b	Brace panel, 3 post	64.00	EACH	173.85	11,126.40
61904c	Brace panel, 5 post	8.00	EACH	225.37	1,802.96
62406	Placing conserved topsoil	46,535.00	C.Y.	1.00	46,535.00
62501	Seeding, Dry Method	93.35	ACRE	234.39	21,880.31
62504	Mulching, Dry Method	93.55	ACRE	243.57	22,785.97
6307	Fertilizer, Dry Method	7.00	TON	700.16	4,901.12
632901	Matting, excelsior blanket	111.00	S.Y.	11.80	1,309.80
63301a	Sign installation (18" x 24")	8.00	EACH	185.27	1,482.16
63301b	Sign installation (21" x 15")	4.00	EACH	185.27	741.08
63301c	Sign installation (24" x 12")	5.00	EACH	185.26	926.30
63301d	Sign installation (24" x 30")	5.00	EACH	185.26	926.30
63301e	Sign installation (30" x 30")	15.00	EACH	185.26	2,778.90
63301f	Sign installation (36" x 36")	5.00	EACH	185.26	926.30
63301g	Sign installation (36" x 48" x 48")	8.00	EACH	213.33	1,706.64
63301h	Sign installation (30" x 96")	8.00	EACH	213.33	1,706.64
63403a	Pavement markings, type "B" (white)	202.00	GAL	32.19	6,502.38
63403b	Pavement markings, type "B" (yellow)	69.00	GAL	32.19	2,221.11
63501	Temporary traffic control	1.00	L.S.	6,500.00	6,500.00
63505a	Barricade, type I	4.00	EACH	280.71	1,122.84
63505b	Barricade, type III	8.00	EACH	561.40	4,491.20
63507	Construction Sign	426.25	S.F.	15.39	6,569.99
63509	Flagger	2,000.00	HOURL	15.85	31,700.00
63510	Pilot Car	750.00	HOURL	24.19	18,142.50
63515	Temporary Pavement Markings	11.90	MILE	336.84	4,008.40
63521	Warning Light, Type "A"	10.00	EACH	280.70	2,807.00
63701	Field Office	1.00	L.S.	5,052.58	5,052.58
Total					\$ 3,234,377.72

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